

## Interference Training

12 July 2000

### A.

1. There will be a meeting before interference papers are forwarded to the board to determine whether an interference should be declared. The meeting will involve:

- a. the examiner;
- b. an interference specialist; and
- c. an administrative patent judge.

2. Prior to the time of the meeting, a copy of the claims of any application and any patent to be involved in a proposed interference will be forwarded to the Trial Section.

3. Meetings will be scheduled by the interference specialist.

4. The examiner and the interference specialist will obtain copies of any application and patent files for any application or patent to be involved in the interference, as well as all parent files--whether or not benefit is to be accorded.

5. At the meeting, the examiner and the interference specialist should be prepared to advise the board:

- a. why there is an interference-in-fact, and specifically which claim of a first party, e.g., an applicant, defines the same patentable invention as a claim of a second party, e.g., a patentee;

- b. what claims of the parties define the same patentable invention as those claims which interfere-in-fact, with a focus on the differences between claims and the significance of that difference i.e., which claims of the parties are to correspond to the count;

- c. what embodiments are described in the respective specifications for each means plus function clause appearing in claims (a detailed claim chart/table identifying the corresponding structure may be required and, preferably, will have been prepared at the time of the meeting); and

- d. whether benefit for the purpose of priority should be accorded to any party.

6. The examiner and the interference specialist may, but do not need to, propose a count.

7. At the meeting, the board will inform the examiner and the interference specialist of the papers which will need to be

filled out, i.e., Form 850 and/or Rule 609(b) statement and, if there is to be a Rule 609(b) statement, the nature of that statement.

8. The board may provide the examiner and interference specialist with a form to be forwarded with other papers when files are forwarded to the board.

9. It is expected that files will be forwarded to the board shortly after any meeting.

B.

1. An interference-in-fact exists when:

a. the subject matter of a claim of a first party, assuming that subject matter to be prior art to a second party, anticipates or renders obvious the subject matter of a claim of a second party

and

b. the subject matter of a claim of the second party, assuming that subject matter to be prior art to the first party, anticipates or renders obvious the subject matter of the claim of the first party.

2. A count will normally be as broad as the combined scope of all the claims which are to be designated as corresponding to that count, and will generally take the form:

An apparatus (composition, method) according to claim 1 of Smith or an apparatus (composition, method) according to any of claims 1, 3 or 6 of Jones.

3. There can be two or more counts, provided each count defines a separate patentable invention.